

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JOSEPH WARD, MICHAEL ANDERSON,) AU:16-CV-00917-LY
ISAAC LEMELLE, CECIL ADICKES,)
MICHAEL GIBSON,)
Plaintiffs,)
v.) AUSTIN, TEXAS
JOHN HELLERSTEDT,)
Defendant.) OCTOBER 16, 2017

TRANSCRIPT OF CONFERENCE AFTER CLASS CERTIFICATION
BEFORE THE HONORABLE LEE YEAKEL

APPEARANCES:

FOR THE PLAINTIFFS: BETH L. MITCHELL
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DISABILITY RIGHTS TEXAS
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FOR THE DEFENDANT: MICHAEL ABRAMS
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Proceedings recorded by computerized stenography, transcript
produced by computer.

09:24:04 1 (Open Court)

09:24:04 2 THE COURT: We're here for a -- just a general status
09:24:07 3 conference on this case. Let me first get announcements. It's
09:24:11 4 Cause Number 16-CV-917, *Ward*, and others, *v. Hellerstedt*. Let
09:24:19 5 me start with the plaintiffs as to who is here, please.

09:24:22 6 MS. MITCHELL: Beth Mitchell and Peter Hofer for the
09:24:25 7 plaintiffs.

09:24:26 8 THE COURT: All right. And for the defendants?

09:24:28 9 MR. ABRAMS: Michael Abrams and Tom Albright for the
09:24:31 10 defendants. And we have Chris Lopez, who is an attorney with
09:24:34 11 Texas Health and Human Services Commission as well.

09:24:36 12 THE COURT: All right. Well, where I have us is that
09:24:40 13 I certified a class. An interlocutory appeal of that order has
09:24:46 14 been taken. The Circuit has agreed to recognize the
09:24:50 15 interlocutory appeal and allow it to proceed. So let me start
09:24:53 16 with the plaintiff. Tell me where you see we are and what are
09:24:58 17 your suggestions going forward in this case.

09:25:04 18 MS. MITCHELL: We -- you know, currently we are in --

09:25:07 19 THE COURT: You're going to have to either talk in
09:25:09 20 the microphone or look at me or come up here or something so I
09:25:11 21 can hear you. Why don't you come to the podium.

09:25:16 22 MS. MITCHELL: Yeah. We are in the midst of
09:25:18 23 discovery. We just received responses back. But I think with
09:25:22 24 the cert of the class motion, we are probably going to need to
09:25:30 25 either extend or stay the discovery at this point.

09:25:33 1 THE COURT: Now, still speak a little more clearly.
09:25:36 2 I still didn't understand what you're saying.

09:25:38 3 MS. MITCHELL: Because -- because they -- the Fifth
09:25:40 4 Circuit has taken the appeal of the class motion, I think at
09:25:45 5 this point we need to either extend the discovery deadlines
09:25:50 6 or -- along with the scheduling order or stay the discovery at
09:25:55 7 this point. But we also need to -- you haven't appointed class
09:26:01 8 representatives for the class either. When you signed the
09:26:07 9 order, because all of the plaintiffs had moved out, we amended
09:26:10 10 the complaint, added in two new plaintiffs, and you're holding
09:26:15 11 off on actually naming the class representatives, I assumed,
09:26:21 12 until we had amended the complaint and added in new plaintiffs.
09:26:25 13 So that needs to be done as well.

09:26:28 14 THE COURT: All right. Let me hear from the
09:26:29 15 defendants.

09:26:33 16 MR. ABRAMS: Good morning, Your Honor. The
09:26:36 17 defendants intend -- or Defendant intends to move to stay the
09:26:39 18 proceedings pending the Fifth Circuit's resolution of the 23(f)
09:26:43 19 petition. And we've conferred with the plaintiffs, who have
09:26:47 20 indicated they would be unopposed to our motion to stay the
09:26:50 21 proceedings. And it's the defendant's position that, in light
09:26:54 22 of the uncertainty of what classes might come back down after
09:26:57 23 the Fifth Circuit's ruling, that to go ahead with discovery and
09:27:01 24 dispositive motions might result in duplicative and unnecessary
09:27:06 25 efforts that might need to be redone, depending on what the

09:27:09 1 Fifth circuit does on the remand.

09:27:17 2 THE COURT: All right. Thank you.

09:27:19 3 Ms. Mitchell, what is the plaintiffs' position if,
09:27:22 4 suppose, the Fifth Circuit reverses the class certification and
09:27:25 5 rules and renders and says a class action is not appropriate
09:27:29 6 here? Do you intend to proceed forward on behalf of the named
09:27:36 7 defendants with the action in this case?

09:27:43 8 MS. MITCHELL: Yes, your Honor. We would continue to
09:27:46 9 proceed with the named plaintiffs.

09:27:48 10 THE COURT: Well, then --

09:27:48 11 MS. MITCHELL: Although they would probably get
09:27:50 12 mooted out as we keep moving along, so we would have to keep
09:27:53 13 adding new ones.

09:27:55 14 THE COURT: Well, then tell me why we couldn't go
09:28:00 15 ahead and proceed with discovery regarding the five persons who
09:28:05 16 are currently named as plaintiffs while we wait and see what
09:28:08 17 the Circuit's going to do on the certification issue?

09:28:11 18 MS. MITCHELL: Well, so some of those plaintiffs
09:28:13 19 are -- if it's not -- if we don't have the class certified,
09:28:17 20 some of those plaintiffs' claims are moot. So we have two live
09:28:20 21 plaintiffs right now who are currently waiting in jail. So
09:28:23 22 there's only two. We could go forward with those; however, the
09:28:30 23 issues are still -- I think what the defendant would say and
09:28:33 24 has indicated in their responses to discovery is that they
09:28:36 25 don't want to provide responses that are global responses

09:28:40 1 because they think it applies to the class instead of to
09:28:44 2 individual plaintiffs.

09:28:46 3 THE COURT: All right. Now, why -- why would you
09:28:53 4 need broad discovery that the State does not want to give you
09:28:58 5 with regard to the individual named plaintiffs?

09:29:03 6 MS. MITCHELL: Because I think for a 1983 action we
09:29:06 7 still need to prove pattern and practice, and so we're still
09:29:09 8 going to need the scope of what's been going on to show the
09:29:13 9 pattern and practice.

09:29:19 10 THE COURT: All right. And let me hear from you,
09:29:20 11 Mr. Abrams.

09:29:21 12 MR. ABRAMS: Your Honor, the -- the dispositive
09:29:24 13 motions that would need to be written based on whether it's a
09:29:27 14 class action or the individual plaintiffs would be different
09:29:32 15 because the circumstances of the individuals versus the -- the
09:29:35 16 classes that have been certified could be different.

09:29:37 17 And so, at this point, it just seems to be the most
09:29:44 18 prudent course to stay the proceedings and see what the Fifth
09:29:47 19 Circuit sends back down to -- to this court in terms of the
09:29:51 20 classes or decertifying the classes, potentially.

09:29:57 21 THE COURT: Well, let me tell you what my problem is.
09:30:02 22 I -- I really -- I really dislike staying something which
09:30:18 23 amounts to was is an indefinite stay, because there's no
09:30:24 24 telling how long the Circuit is going to take to get anything
09:30:30 25 done in this case. But I also understand the parties'

09:30:38 1 positions.

09:30:40 2 Let me ask you: When do you think you're going to
09:30:48 3 file a motion to stay? You know, clearly I could have had that
09:30:53 4 in front of me by now.

09:30:55 5 MR. ABRAMS: We plan on moving today or tomorrow. We
09:30:58 6 wanted to confer with Plaintiffs first and discuss the issues
09:31:00 7 with the Court before we filed it.

09:31:04 8 THE COURT: Well, all right. I'm going to leave
09:31:06 9 everything we have in place right now in place, and I will
09:31:12 10 consider any motion to stay I get when I get it. But right now
09:31:19 11 the case remains under the current scheduling order and remains
09:31:24 12 proceeding along under that order.

09:31:26 13 Is there anything else we need to take up while I've
09:31:29 14 got you-all available here today?

09:31:36 15 MS. MITCHELL: Just as I mentioned before,
09:31:37 16 Your Honor, in terms of naming the plaintiffs for the
09:31:40 17 representatives of the class.

09:31:42 18 THE COURT: Well, I want you both to get in whatever
09:31:46 19 you need to get in at this point, you know, and then I'll
09:31:53 20 consider that and decide where we are. If you're going to file
09:31:57 21 something about wanting a class member designated or class
09:32:01 22 counsel designated, talk with the attorney for the defendants,
09:32:07 23 and that's something that I can render an order on if you're in
09:32:10 24 agreement on it that's a tentative order subject to what the
09:32:15 25 Circuit's ultimate ruling is on the class or not.

09:32:18 1 It doesn't have to wait, but it's something that I am
09:32:22 2 going to tell you, if the Circuit affirms my previous class
09:32:26 3 order, I'm going to tell you I want you to sit down and agree
09:32:29 4 on it anyway. So there's no reason why you can't go ahead and
09:32:33 5 do that now, and that can be just sitting there until we see
09:32:37 6 what's going to happen with the Circuit in the event I grant
09:32:40 7 the stay. There's no reason why we can't go ahead and get
09:32:44 8 these other preliminary matters in place and then see what the
09:32:47 9 Circuit is going to do.

09:32:50 10 So proceed with whatever you're going to proceed
09:32:54 11 motion wise right now -- don't wait -- and I will deal with it.
09:32:58 12 But I think this is something you ought to be able to work out
09:33:01 13 together if you sit down and talk about it.

09:33:03 14 MS. MITCHELL: Okay. Thank you.

09:33:04 15 THE COURT: Anything else, Mr. Abrams?

09:33:07 16 MR. ABRAMS: No, Your Honor. And we'll move ahead
09:33:10 17 with filing a motion for stay promptly.

09:33:12 18 THE COURT: And sit down and talk with the plaintiffs
09:33:14 19 and see if we can get all of the pieces in place. And if I
09:33:17 20 grant the stay, then it will just be sitting here awaiting what
09:33:21 21 we're going to get from the Circuit. If the Circuit says
09:33:25 22 there's not going to be a class here, then we haven't lost
09:33:28 23 anything by going ahead and getting class counsel and class
09:33:30 24 representative appointed. If the Circuit says, no, we're going
09:33:34 25 to keep the class in effect, then we're ready to proceed at

09:33:37 1 that point.

09:33:39 2 All right. Thank you. Court's in recess.

0:0:0 3 (End of transcript)

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1 UNITED STATES DISTRICT COURT)

2 WESTERN DISTRICT OF TEXAS)

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States.

10 WITNESS MY OFFICIAL HAND this the 19th day of
11 October 2017.

12

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